

February 16th, 2009

Mr. Henry Marquard
Stanley Consultants
225 Iowa Avenue
Muscatine, Iowa 52761

Dear Henry,

Thank you for taking the time to meet with us last week. It was a pleasure to learn more about the EPC and their role as it relates to the Iowa DNR and the function they serve. As you are aware, Lemna has been working for several years to promote our technology in the state of Iowa. To date, we have installed four facilities and have another under construction. We continue to work with communities and consulting engineers throughout the state in developing other opportunities for the future. We have several projects currently in design and some in various stages of review by the DNR.

As I mentioned in our meeting, perhaps the largest challenge in our endeavors in Iowa over the past several years has been the approval process within the DNR on specific projects. The review and approval process has been in many cases confusing, and in general a frustrating process for not only us but the communities and consulting engineers involved. Approximately a year ago, we decided to make an effort to improve the communication between Lemna and the Department in hopes that a more streamlined, effective process could be implemented. Before I further explain these efforts, let me focus first on the main issue:

In the context of the Iowa Wastewater Design Standards, the DNR has chosen to consider our wastewater process as a "New Process". Although the Lemna process was new to the state of Iowa, the Lemna process and various forms of the process have been around since the mid 90's. Since the technology is being treated as "New" by the Department, we are required to submit per the requirements found in Chapter 14.4.3, Wastewater Facilities Design Standards. A copy of this chapter has been enclosed for your reference. It is our belief this chapter is extremely vague and leaves the door open to a great deal of misinterpretation. For instance, this chapter does not answer basic questions such as:

- 1.) Is the evaluation project specific or done prior to submitting on a specific project?
- 2.) If it is project specific, at what time should this information be submitted?
- 3.) How many projects need to be reviewed and approved before the technology is no longer considered "New" by the department.

The chapter includes one sentence stating a general requirement for the new process under review: "The specific information required by the Department to demonstrate operational reliability and effectiveness will depend on the process or device under consideration."

Our interpretation of this statement would leave us to believe that if the process and information submitted demonstrates operational reliability and effectiveness, an approval would be granted. Furthermore, we interpret this statement to mean the role of the Department is to review the information submitted, and review from the standpoint of meeting this general requirement. It is also further assumed that it is the role of the consulting engineer and process supplier to provide the design background needed to support the process in general. It is clear from the confusion experienced during many of the project reviews and ongoing communications we are having with the Department, that the focus of the Department seems to be in reengineering and design recommendation and specification, rather than focused in the area of design review.

As I mentioned earlier, it is the ambiguity of this chapter and the ongoing frustration in the approval process that led us down the road of seeking a more streamlined and effective approach. To that end, several meetings were held between us and senior DNR staff before a department wide meeting was held with all the department reviewers and some senior staff present. The department wide meeting was an attempt to further educate the Department on the Lemna process and to specifically address any outstanding issues. As a result of this meeting, the DNR chose to conduct a design review of the Lemna process using information they gathered from previous projects and research conducted on their own.

A first draft of this design review was submitted to Lemna for review in late November with a response to the review by Lemna sent just this past month. I am expecting a response to our comments soon. Although many of the design recommendations included in their review are amenable to Lemna, it is clear that from the contents of this design review that the focus of the Department remains to be in re engineering rather than focused in the area of design review and determining the "operational reliability and effectiveness of the process".

During one of our first meetings with senior DNR staff, in efforts to offer a solution to rectify the issue, Lemna submitted a simple action plan. The main focus was suggesting a third party engineer being involved in a formal design review, facilitating both views. This approach apparently was not considered at the time by the Department.

14.4.3 Required Engineering Data for New Process Evaluation

The policy of the Department is to encourage rather than obstruct the development of any new methods or equipment for treatment of wastewater. The lack of inclusion in the design standards of some types of wastewater treatment processes or equipment should not be construed as precluding their use. The Department may approve other types of wastewater treatment processes and equipment under the condition that the operational reliability and effectiveness of the process or device shall have been demonstrated with a suitably-sized prototype unit operating at its design load conditions. The specific information required by the Department to demonstrate operational reliability and effectiveness will depend upon the process or device under consideration. Information which may be required include:

- a. Monitoring observations, including test results and engineering evaluations, demonstrating the efficiency of such processes.
- b. Detailed description of the test methods.
- c. Testing, including appropriately-composited samples, under various ranges of strength and flow rates (including diurnal variations) and waste temperatures over a sufficient length of time to demonstrate performance under climatic and other conditions which may be encountered in the area of the proposed installations.
- d. Other appropriate information.

The Department may require that appropriate testing be conducted and evaluations be made under the supervision of a competent process engineer other than the one employed by the manufacturer or patent holder.

14.4.4 Design Period

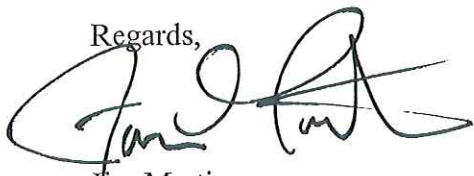
14.4.4.1 General

The design period shall be clearly identified in the engineering report or facilities plan. The normal design period for municipal wastewater facilities is 20 years beyond the date of completion of construction. Use of a shorter design period must be justified and a schedule of action submitted which identifies future improvements to avoid effluent quality violations caused by growth.

Industrial facilities shall, as a minimum, be sized to adequately treat wastewater produced during the maximum projected production period.

To conclude, we seek the EPC's aide in offering clarity of Chapter 14.4.3, and we seek a reasonable and economically viable design standard that we may continue to promote our process to the consulting engineering community and towns throughout the State of Iowa. I would appreciate learning what assistance your commission can provide to draw conclusion to this.

Regards,

A handwritten signature in black ink, appearing to read 'Jim Martin', with a large, stylized flourish extending to the right.

Jim Martin
Lemna Technologies, Inc.

Alternative Technology Approvals

Technology AKA	Process	City	Date	Notes	DNR PM
AdvanTex	Recirculating fabric filter system	Bevington	06/23/08	Not in compliance – startup conditions?	SK
IFAS	Integrated Fixed film Activated Sludge with STM aerator - rotating wheel aeration and mixing system.	Victor	03/09/06	Currently in non-compliance	SK
MBR	Activated sludge ultra-filtration process	North Liberty	03/21/07		SK
Wetland	Constructed wetland				SK
Sand Filter	Sub-surface re-circulating sand filtration process	Toronto	07/27/01		SK
Mound System	Large scale mound system	Truesdale	App'd - Not constructed		SK
Fluidyne	SBR process	Winworth	Under review		SK
LP System	Low pressure collection system	Ayrshire	06/07/06	carries septic tank effluent	SK
SD sewer	Small diameter gravity sewer system	Truesdale	07/25/06	carries septic tank effluent	SK
Crop Irrigation	Large scale crop irrigation	Bloomfield	proposed		SK
Aeromod		Wellman	11/15/00	Activated sludge process-design with proprietary equipment - standard applies to some of the process elements	SK
Aeromod		Marquette	04/29/02	Activated sludge process-design with proprietary equipment - standard applies to some of the process elements	SK
AdvanTex	Fabric filter system	Truesdale	11/28/07		SK
Rapid Infiltration Pond (RIP)	Constructed Farm Pond	Truesdale		For effluent disposal option	SK
Modified Ludzack-	Nitrification/denitrification of high strength industrial	Sioux City	3 or 4 /09	Under review	TK

Ettinger (MLE)	waste				
LEMNA	Covered complete/partial mix aerated lagoons	Villisca	1/10/07		TK
	High density media in insulated TFs for nitrification	Ames	1986		TK
SD sewer	Small diameter gravity sewer system	Welton	2/28/89	carries septic tank effluent	TK
Wastewater land application	Supplemental golf course irrigation	Ankeny			TK
Wastewater land application	Supplemental golf course irrigation	Oskaloosa			TK
Wetland	Constructed wetland	Granger	1985		TK
LP System	Low pressure collection system	Macksburg	3/6/07	carries septic tank effluent	TK
Reed Beds	Sludge dewatering and storage	Manning	2/23/07		TK
ICEAS	Intermittant cycle extended aeration SBR	Oelwein	2/16/07		TK
Reed Beds	Sludge dewatering and storage	Oelwein	2/16/07		TK
Wetland	Constructed wetland	Chelsea	10/9/89		TK
SD sewer	Small diameter gravity sewer system	Chelsea	10/9/89	carries septic tank effluent	TK
SBR	Sequencing batch reactor	Clear Lake SD	1996		TK
SBR	ISAM Sequencing batch reactor	Eldora	2004		TK
SBR	Sequencing batch reactor	Marshalltown	1989	Industrial waste treatment	TK
SBR	Sequencing batch reactor	Mt Pleasant	1999		TK
AdvanTex	Recirculating fabric filter system	Watkins (Poweshiek RW)	2006		LB
LP System	Low pressure collection system	Bouton	2007	pumps septic tank effluent to Perry	LB
SD sewer	Small diameter gravity sewer system	Dolliver	2008	carries septic tank effluent	LB
AdvanTex	Recirculating fabric filter system	Dolliver (ILRW)	2008		LB
AdvanTex &	Recirculating filter and	Maple River	2008	Both processes designed	LB

FAST	Fixed Activated Sludge	Jct		and approved as alternates – Req'd by RD	
SD sewer	Small diameter gravity sewer system	Maple River Jct	2008	carries septic tank effluent	LB
SBR	ISAM Sequencing batch activated sludge	Riverside	2006		LB
SBR	ISAM Sequencing batch activated sludge	Lamoni	2006		LB
Reed Beds	Sludge dewatering and storage	Nashua	2008		LB
Thermophilic Anaerobic digestion	Sludge treatment	Newton	2002		LB
Supplemental aeration	Deep 2-cell lagoon	Schaller			BD
FAST	Fixed Activated Sludge followed by recirculating gravel filters	Maharishi Vedic City	2007 & 2008		BC
SD sewer	Small diameter gravity sewer system	Greenville (ILRW)	2005	carries septic tank effluent	BC
Wetland	Subsurface flow wetlands	Greenville (ILRW)	2005		BC
Sand filter (wetland)	Single pass subsurface wetlands	Sentral School, Fenton	2007		BC
AdvanTex	Recirculating fabric filter system	Interstate P&L, Burlington	2005		BC
AdvanTex	Recirculating fabric filter system	Interstate P&L, Ottumwa	2007		BC
Lemtec	Covered aerated lagoon	Lakewood Development, Solon	2008		BC
Zabel biofilters		Country Aire MHP, Iowa City	2002		BC
LP System	Low pressure collection sewers to larger systems	Osceola Maharishi Vedic City Pocahontas Lenox	2008 2008 2008 2008		

		DeWitt Rock Rapids Lynnville Lake View Johnston Mitchellville Clarinda Jasper County	2008 2008 2008 2006 2006 2006 2006 2007		
Vertical turbine pumps		Ames	1986		
Vertical turbine pumps		Sioux City, Flood St LS	9/7/06		TK
Vortex Grit removal		Multiple sites			
Effluent reuse	effluent reuse – tertiary treatment with cloth media filters, UV disinfection, chlorination, dechlorination for power plant cooling water	Clear Lake SD	6/20/03		SC
Effluent reuse	effluent pumping for industrial cooling water	Shenandoah			
Biolac	Lagoon aeration	Fairfax	6/30/2006		
Biolac	Lagoon aeration	Norwalk	5/21/99		
Biolac	Lagoon aeration	Sully	4/12/96		
Biolac	Lagoon aeration	Waukee	5/18/98		
Biolac	Lagoon aeration	Humbolt	5/5/99		
Wetlands	Constructed wetlands	IAMU			
Wetlands	Constructed wetlands	Mt. Sterling			
Mound	Larger than private	Crestview MHP			
Mound	Larger than private	Fourmile School			
Mound	Larger than private	Ames Golf and Country Club			
LEMNA	Covered aerated cells	Strawberry Pt.	11/4/05		
LEMNA	Covered aerated cells	Wheatland	2/16/06		
LEMNA	Covered aerated cells	Sheffield	11/6/06		
Aeromod		Shellsburg		Activated sludge	

				process-design with proprietary equipment - standard applies to some of the process elements	
Aeromod		Walford		“	
Aeromod		Farley		“	
Aeromod		Corning	2002	“	EL
Aeromod		Long Grove	2007	“	EL
Aeromod		Lansing	2007	“	EL
Temp phased anaerobic digestion		Marshalltown	2002		EL
IFAS	Integrated Fixed film Activated Sludge with STM aerator - rotating wheel aeration and mixing system.	Ely	2007		EL
SBR		Reinbeck	2004		EL
Vortex grit removal		Newton	2007		EL
Vortex grit removal		Carroll	10/13/03		SC
FAST	Aeration system followed by soil absorption	CED REL Supper Club, Cedar Rapids	10/13/04		SC
LPS	Low pressure sewer	Central Iowa Water Assoc., Harvestor Lagoon	3/12/04		SC
Sand Mound		Crestview MHP, Ames	7/14/05		SC
Soil absorption system		First Christian Church, Council Bluffs	6/15/04		SC
SBR		Hopkinton	12/9/03		SC
Carbon adsorption odor control		Mason City	12/2/03		SC
Rotary Drum thickener	Sludge processing	Clear Lake SD	8/31/04		SC
IFAS	Integrated Fixed film Activated Sludge with STM aerator - rotating wheel aeration and mixing system.	Council BLuffs	3/2/06		SC

Carbon Adsorption	Plus effluent filtration	Iowa Army Ammunition Plant, Middletown	7/15/05	Treats RDX	SC
Soil absorption		Lake Panorama Resort	10/6/04		SC
AdvanTex	Recirculating fabric filter system – no discharge	Wapsie Valley Comm. School, Fairbank	6/3/05		SC
Sand Mound		Kum & Go, Tipton	9/22/08	Used Alt WW guidance doc	SC
STEP collection sewers		Woods at Hunters Creek, Johnson Co.	10/22/08	Used Alt WW guidance doc	SC
Recirculating filters		Woods at Hunters Creek, Johnson Co.	10/22/08	Used Alt WW guidance doc	SC
Drip Dispersal disposal		Woods at Hunters Creek, Johnson Co.	10/22/08	Used Alt WW guidance doc	SC
STEP collection sewers		Superior	1/28/09	Used Alt WW guidance doc	SC
LPS collection		Martensdale	8/10/07		SC
LPS collection		Waukee	1/24/08	Used Alt WW guidance doc	SC
LPS collection		Manchester	1/2/08	Used Alt WW guidance doc	SC
LPS collection		Sanborn	1/27/06		SC
LPS collection		Stuart Properties, Dubuque	1/24/06		SC
LPS collection		Pocahontas	1/5/06		SC
LPS collection		Woodbine	9/25/05		SC

Recirculating Sand/Gravel Filters not on above list

1. Jester Park #2: 677000916
2. Wapsie Valley High School: 60900501
3. Water's Edge Subdivision: 69200302
4. English Valley Estates: 69233300
5. Bankston City Of Stp: 63109001 – community system

6. Country Aire Trailer Court-Stp: 60600601
7. Golden Ridge Cheese Coop.-Land Appl.: 64500112
8. Randalia City Of Stp: 63361001 – community system
9. Woodlands Treatment Center(For Troubled Kids): 62900801
10. Maharishi Vedic City: 65159001 – community system
11. Ip&L-Burlington Generating Station: 62900101
12. Saint Olaf City Of Stp: 62277002 – community system
13. Zwingle, City Of Stp:6 4998001 – community system
14. Bronson City Of Stp: 69709001 – community system
15. Marathon City Of Stp: 61150001 – community system
16. Rinard City Of Stp: 61374001 – community system
17. Panama City Of Stp: 68355001 – community system
18. Brooklyn Shortstop Travel Center: 67900209
19. Camp Hantesa Stp (Camp Fire): 60800403
20. Cumming City Of Stp: 69123001 – community system
21. Hickory Grove Mobile Home Park: 68500600
22. Cambridge Investment Research Inc.: 65100105
23. Hy-Vac Labs: 62500120
24. Sleep Inn Motel: 67900208
25. Usfilter Wastewater Group Incorporated: 68500113
26. The Meadows Of Dubuque,Inc. Golf Course Stp: 63100803
27. Pilgrim Heights Retreat Center-Stp: 68600402
28. Ymca Camp Of Boone: 60800404
29. Ainsworth Corners,Inc.-Stp-Truck Stop, Restaurant: 69200201
30. Books Are Fun, Ltd.: 65100201
31. Cnh America Llc Burlington Proving Grounds: 62900109
32. Harmony Community School: 68900500
33. Highland Community School: 69200501

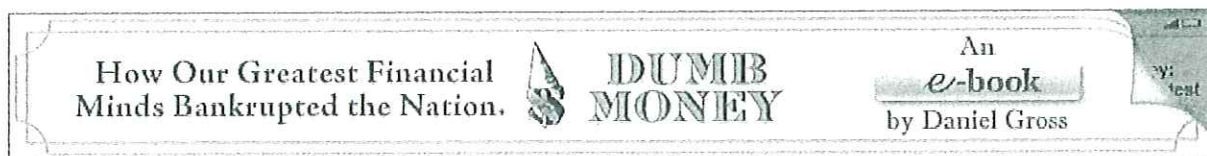
Land application systems

Facility	Type	Phone
City of Sioux Center	Golf Course Irrigation	712-722-0945
City of Iowa City	Soccer Field Irrigation	319-356-5178
City of Remsen	Golf Course Irrigation	712-786-2136
City of Woodward	Golf Course Irrigation	515-438-2560
City of Shenandoah	Golf Course Irrigation	712-246-3839
City of Fairfield	Golf Course Irrigation	515-472-5218
City of Coralville	Golf Course Irrigation	319-248-1745
City of Waverly	Golf Course Irrigation	319-352-6248
City of Ankeny	Golf Course Irrigation	515-965-6710
City of Indianola	Golf Course Irrigation	515-961-5616
City of New Hampton	Golf Course Irrigation	641-399-5906
City of West Union	Golf Course Irrigation	319-422-5744
City of Fredricksburg	Ag land irrigation	

All of the above are incidental land application opportunities – designed for surface discharge with an option of diversion to land

Subj: Slate Article: Can We Turn Garbage Into Energy?
 Date: 3/16/2009 8:06:32 A.M. Central Daylight Time
 From: cbhubbell@gmail.com
 To: janetaltes@aol.com

CHubbell has sent you an article from **Slate**.



the green lantern

Can We Turn Garbage Into Energy?

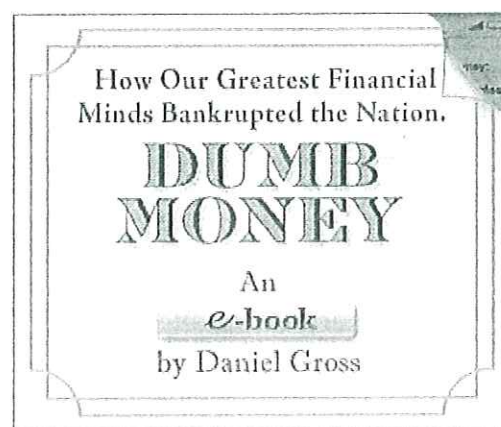
The pros and cons of plasma incineration.

By Brendan I. Koerner

Updated Wednesday, Jan. 2, 2008, at 8:05 AM ET

My town council is considering a proposal to build a plasma incinerator. The company behind the project says the facility will convert solid waste into energy, without producing any harmful emissions. Call me a cynic, but their pitch sounds way too good to be true. Am I right to be suspicious?

As proponents of this waste-disposal method always hasten to point out, "plasma incineration" is actually a misnomer—well, at least the "incineration" part. There is no combustion required, and thus no flames or acrid smoke. A more accurate moniker is "plasma gasification," since the end products of the process are syngas and an inorganic solid that can be used to make asphalt or concrete. This peculiar transformation is made possible by a device long cherished by steel cutters: the humble plasma torch.



Since these torches aren't on fire, you can banish from your mind the image of irate villagers storming Dr. Frankenstein's castle. Instead they work by shooting an electric current across an electrode assembly, thereby ionizing an inert gas—sometimes nitrogen, sometimes just plain air. That ionized gas, or plasma, in turn becomes scorchingly hot, with temperatures that can range upward of 27,000 degrees Fahrenheit—hotter than the surface of the sun. Garbage that passes through that sizzling stream doesn't stand a chance: Its molecular bonds are torn asunder, leaving behind syngas consisting mostly of hydrogen and carbon monoxide, and slag that, when cooled, resembles obsidian.

Once the garbage has been zapped, the syngas is cleansed of harmful traces; it's particularly important to get rid of any hydrogen chloride, which can be done by adding calcium oxide. Heavy metals, meanwhile, must be removed from the slag—no one wants their asphalt to contain lots of mercury and cadmium, both of which are highly toxic.

Then the decontaminated syngas is burned like natural gas, producing enough electricity to power the plant itself, and for resale to the electrical grid. According to Sun Energy Group, which has proposed building a massive plasma gasification facility in New Orleans, disposing of a ton's worth of trash will yield 55.2 kilowatts of power. On top of that, companies claim that plasma gasification plants emit relatively small amounts of carbon dioxide—about on par with that of comparably sized natural gas plants. (Though a nonrenewable fossil fuel, natural gas emits less CO₂ than either coal or oil when burned.)

So, why doesn't every hamlet in America do away with its landfills and build one of these wondrous plants? The plasma gasification industry claims it's mostly a matter of economics: Burying garbage has long been a lot cheaper than zapping it, even if you factor in the money to be made selling electricity.. Landfills charge (PDF) municipalities an average of \$35 per ton of trash; according to a recent study in Hamilton, Ont., dropping off a ton

of garbage at a plasma gasification plant would run \$172 per ton.

Plasma gasification companies dispute this figure, contending that their method has become more affordable because of increasing efficiency in electricity generation: Canada's Plasco Energy Group, for example, says that 46 percent of zapped waste now becomes energy, compared with 18 percent with earlier plant designs.

The cost gap could be even smaller if plasma gasification plants labeled their electricity as "green" and sold it at a premium to eco-minded customers. But many environmentalists bristle at this prospect, claiming that plasma disposal technologies are merely updated versions of mass-burn incinerators, which have fallen out of vogue in the United States because of problems with dioxin emissions. The activists' chief gripes, summarized [here](#) (PDF), are that syngas emissions contain toxic acids and other pollutants, and that the slag retains dangerous levels of heavy metals even after being cleaned. They also note that it's prudent to doubt a technique that's historically been used to get rid of chemical weapons, PCBs, and other nasty remnants of an earlier, less eco-conscious age. (At facilities that handle such dangerous materials, the syngas isn't burned to produce electricity.)

Maybe the environmentalists are right, and maybe they're overreacting—unfortunately, nobody really knows. There is a noticeable dearth of impartial studies assessing the emissions of existing plasma gasification plants that handle municipal solid waste. The hope is that someone will closely monitor the operation of Plasco's pilot project in [Ottawa](#), which aims to process a somewhat piddling 75 tons of garbage per day. (The proposed New Orleans plant, by contrast, is designed to handle 2,500 tons a day.)

Given how little we know about plasma gasification's environmental impact at this point, the Lantern advises caution. While the process certainly holds promise, beware of any company that touts it as a zero-emissions miracle that will quickly pay for itself. And no matter how many millions your town pours into plasma, it's not going to change the fact that we should focus first on reducing waste, rather than figuring out ways to perpetuate the more reckless aspects of our consumption.

Is there an environmental quandary that's been keeping you up at night? Send it to ask.the.lantern@gmail.com, and check this space every week.

Brendan I. Koerner is a contributing editor at Wired and a columnist for Gizmodo. His first book, [Now the Hell Will Start](#), is out now.

Article URL: <http://www.slate.com/id/2181083/>

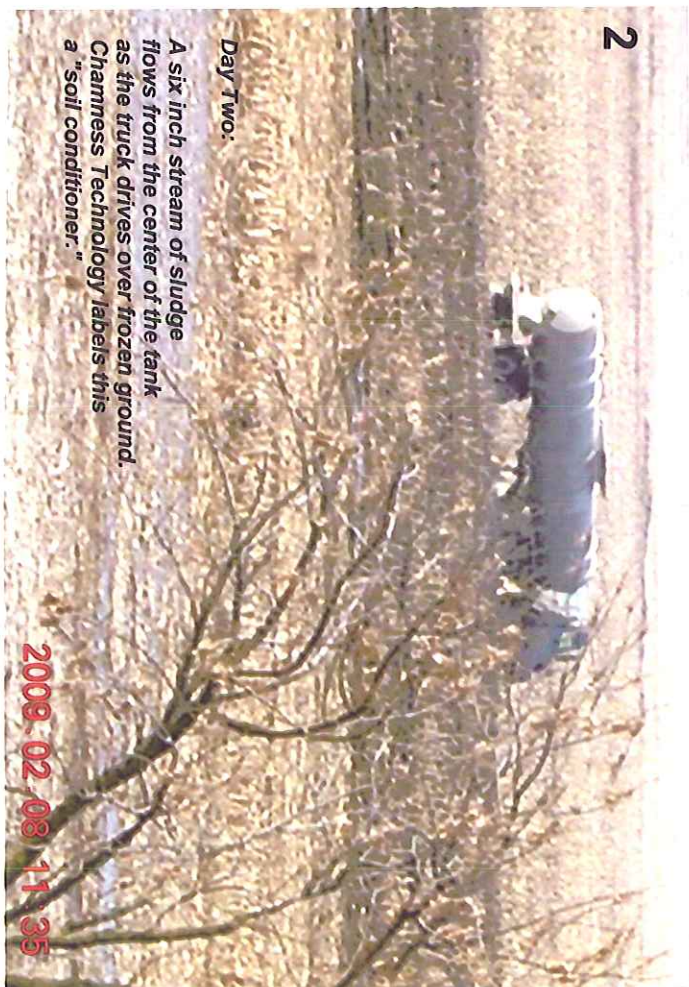
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Jan



1
Day One
Harrison County, Iowa
Frozen ground in February accepts
the onslaught of sludge.
One truck in the field.
Four are lined up
ready to unload.

2009.02.07 12:50



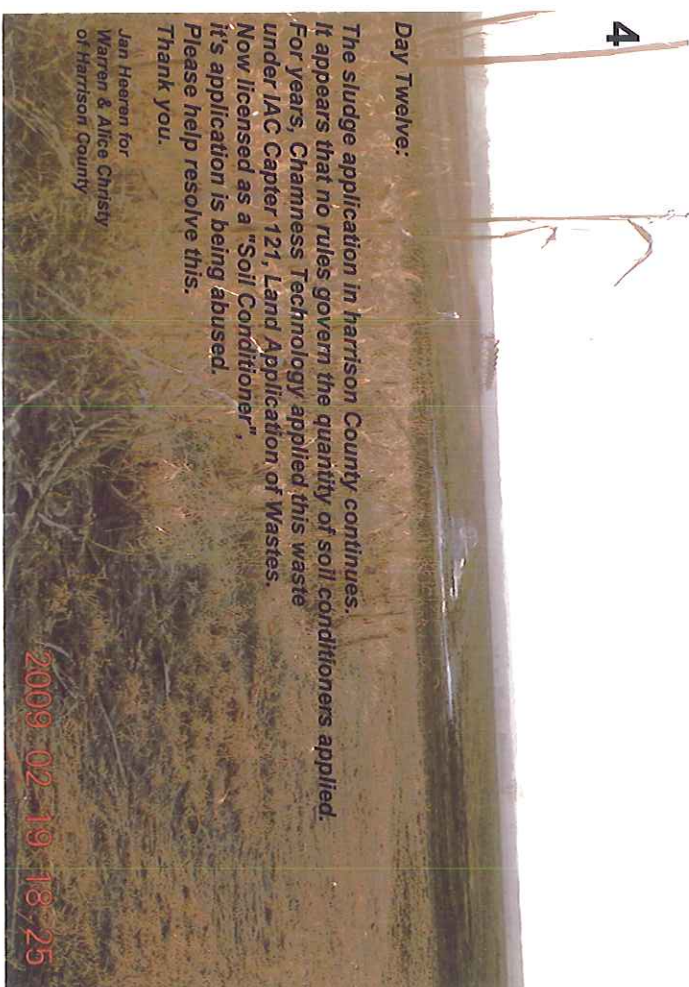
2
Day Two:
A six inch stream of sludge
flows from the center of the tank
as the truck drives over frozen ground.
Chamness Technology labels this
a "soil conditioner."

2009.02.08 11:35



3
Day Eight:
The sludge perches in a thick layer,
two to four inches deep,
on frozen ground.
Where will this sludge go when
temps warm and it rains?

2009.02.15 08:53



4
Day Twelve:
The sludge application in Harrison County continues.
It appears that no rules govern the quantity of soil conditioners applied.
For years, Chamness Technology applied this waste
under IAC Chapter 121, Land Application of Wastes.
Now licensed as a "Soil Conditioner",
it's application is being abused.
Please help resolve this.
Thank you.

Jan Heeren for
Warren & Alice Christy
of Harrison County

2009.02.19 18:25



March 15, 2009

Commissioners:

Shearon Elkin
Paul Johnson
David Petty

Susan Heathcote
Henry Marquard
Marty Stimson

Charlotte Hubbell
Suzanne Morrow
Gene VerSteeg

RE: Water Use and Allocation Permit Fees

I am unable to attend the March 17, 2009 meeting of the Environmental Protection Commission, due to the last minute scheduling of a presentation to the Senate-Environment and Energy Committee on the same day.

The members of the Iowa Association of Water Agencies (IAWA) and Des Moines Water Works (DMWW) strongly urge commissioners to approve the previously agreed to water use and allocation permit fee, in which all parties have had the opportunity to participate individually or to have an industry or association represent them in the discussions. The concerns from irrigators, were also raised during the legislative discussions of the fee bill, and were not agreed to by legislators or other stakeholders. The bill passed both houses without amendment. All stakeholders agreed that the fee should reflect the cost of issuing a permit and that the fee may be recalculated annually to reflect any increased cost of issuing the permit.

The fee bill began the legislative session as part of a bill that included updating and funding the state water plan. But, due to differences that could not be reconciled with legislators and/or stakeholders the two issues were separated. The fee bill passed as agreed to by stakeholders and an appropriation of \$500,000 was passed to fund the department's proposed state water plan, and that funding has continued annually up to the current time.

Iowa's surface and ground water resources are part of the State's infrastructure. These resources belong to all citizens of Iowa, and they have entrusted the care of that infrastructure to the State of Iowa. IAWA and DMWW believe the state should invest in that infrastructure by committing appropriate funding to improve, protect and appropriately manage these resources for the citizens of Iowans; and to do so, using money from the general fund. The drinking water industry has recommended and strongly supports two potential funding sources; those include; utilizing the close to \$18 million dollars in sales tax collected annually on drinking water or to charge sales tax on bottled water.

During stakeholder discussions with legislators and the Department, we recommended reconvening after the legislative session to further discuss support for planning and funding of the state water plan. I believe stakeholders are still committed to having these discussions.

Thank you for the opportunity to comment, and I urge you to support the agreed upon process for determining water use and allocation permit fees.

Linda Kinman
IAWA-Executive Director-Public Policy
DMWW-Research/Regulatory Coordinator

IAWA Membership

**Ankeny, City of
Boone, City of
Burlington Municipal
Waterworks
Cedar Falls Utilities
Cedar Rapids Water
Department
Central Iowa Water Assoc.
Coralville Water Department
Council Bluffs Water Works
Des Moines Water Works
Ft. Dodge Water Plant
Ft. Madison Water Department
Iowa City Water Division
Iowa-American Water Co.
Keokuk Water Department
Muscatine Power and Water
Newton Waterworks
Oskaloosa Water Department
Ottumwa Water and Hydro
Poweshiek Water Association
Rathbun Regional Water Assoc.
So. Iowa Rural Water Assoc.
Spencer Municipal Utilities
Urbandale Water Utility
Waterloo Water Works
West Des Moines Water Works
Xenia Rural Water**



Member

Iowa Water Pollution Control Association

March 4, 2009

Mr. Henry Marquard, Chairman
Environmental Protection Commission
108 Eagle Watch Road
Muscatine, Iowa 52761

Dear Mr. Marquard:

Subject: Rule 567 – Chapter 60, 62, 63, and 64.

The Environmental Protection Commission (EPC) recently passed changes to the subject rule. The Iowa Water Pollution Control Association (IWPCA) was unable to respond to the final revised rule in time to make a presentation on some lingering concerns to the EPC at its February meeting.

IWPCA's representatives John Hall, Gary Cohen and Ted Payseur along with many of our member cities provided input and comments to Iowa Department of Natural Resources (IDNR) during this rulemaking. Communications between the IWPCA and the IDNR has resulted in revisions that make a better rule. However, we have some concerns related to basement backup issues, inapplicability of mixing zones to CSOs and other intermittent discharges, requirement for BOD₅ instead of continued use of CBOD₅, effluent trading and de minimis issues that have not been fully addressed in the passed rule revisions. We would like to bring these issues to the agency and EPC for further consideration.

We respectfully request that the EPC delay the effective date of the rule revisions for a period of 60 days to allow our representatives to work on these lingering issues with the IDNR and then present them to the EPC at its April or May meeting for its consideration.

We appreciate your attention to this matter and hope that you will add this item to the EPC's next agenda for consideration.

Sincerely,

Kevin Moler
IWPCA President



THOMAS J. MILLER
ATTORNEY GENERAL

Department of Justice

ADDRESS REPLY TO:
HOOVER BUILDING
DES MOINES, IOWA 50319
TELEPHONE: 515/281-5164
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February 26, 2009

Henry Marquard, Chair
Iowa Environmental Protection Commission
108 Eagle Watch Road
Muscatine, IA 52761


Dear Chairman Marquard:

I am responding to your letter dated September 10, 2008, in which you raise questions about an appearance before the Administrative Rules Review Committee by Deputy Attorney General Julie Pottorff and Special Assistant Attorney General David Sheridan. You and I discussed this in our conversation earlier this month; however, I'd like to clarify the role of the Attorney General in writing for the benefit of those commissioners who were not present for our conversation.

You express your concern that attorneys from this office who are assigned to represent the Environmental Protection Commission opposed the position of the agency in an emergency rule making and stated this opposition publicly at the meeting of the Committee. You are particularly concerned that our staff may have had conversations with legislative members of the Committee in advance of the meeting.

I understand that you are distressed by the opposition of my office to the Commission's position before the Committee. While this situation is very unusual, it does not reflect a conflict of interest. The Attorney General is a constitutional officer elected by the people, Iowa Const. art. V, § 12, and charged with the duty to represent the interests of the State and its state officials, Iowa Code § 13.2 (2007). This role is significantly different from the role of a private attorney who may be retained to serve the interests of a private client. Because it is our duty to represent the State, we are obligated to advise state officials when we believe they are not acting in compliance with the law. This obligation may, occasionally, put us at odds with state officials.

With regard to the rule making to which you refer in your letter, David Sheridan had advised the Commission on June 10, 2008, in open session at a public meeting that the use of emergency rulemaking procedures was not justified to address the quorum requirement for Commission votes. When an agency proceeds by what is commonly called an "emergency" rule making, there is no public notice and no opportunity for the public to submit written comments

Mr. Henry Marquard, Chair
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or to request an oral presentation *before* the rule goes into effect. See Iowa Code § 17A.4 (2007). This procedure can only be invoked under the law when “an agency for good cause finds that notice and public participation would be unnecessary, impracticable, or contrary to the public interest. . . .” Iowa Code § 17A.4 (3), as amended by Senate File 2317, § 80 (Iowa 2008).

We do not believe there was good cause to find that it was “unnecessary, impracticable, or contrary to the public interest” to allow the public an opportunity to submit written comments or to request an oral presentation before the rule went into effect. It is not uncommon for the Attorney General’s office to be asked by legislators about public issues that affect state agencies. We are not constrained to remain silent on the law, particularly when we have previously stated our position in open session at a public meeting. The Committee agreed with our position and voted unanimously to object to the emergency rule. The Committee expressly concluded that the quorum issue “did not rise to the level of a true emergency, which would outweigh the value of notice and an opportunity for public participation.” Iowa Administrative Bulletin, August 27, 2008, at p. 548.

I appreciate the opportunity to talk to you to discuss this matter and look forward to working with the Commission in the future to carry out the important duties of the agency. I am hopeful that the discussion between Dave Sheridan and Ed Torme will give us ideas to fully carry out the objectives we talked about.

Sincerely,

A handwritten signature in black ink, appearing to read "T. J. Miller", with a stylized flourish extending from the top left.

THOMAS J. MILLER
Attorney General of Iowa

cc: Suzanne Morrow, Secretary
Charlotte Hubbell
Paul Johnson
Susan Heathcote
Shearon Elderkin
David Petty
Marty Stimson



**IOWA
IRRIGATION
ASSOCIATION**

Wallace Bldg.
Des Moines, Iowa 50319
(515) 281-8587

February 27, 2009

Enviromental Protection Commission
State Capitol
Des Moines, Iowa 50309

Ladies & Gentlemen:

On behalf of the Iowa Irrigation Association I would like to thank each of you for listening to Mr. Willey's presentation of the Irrigators concern with being considered in the same category as Municipal wells that are pumped year round.

Because of adequate seasonal rainfall most irrigation systems have only been used seven (7) of the last ten (10) years.



Iowa Irrigation Association